

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SUSAN WHITE, as Personal Representative
for the Estate of KAYLA WHITE, deceased,
and CODY CAMPBELL, as Personal
Representative of the Estate of BRAEDIN
CAMPBELL, deceased,

Plaintiffs,

Case No. 2:17-cv-12320

v.

Honorable David M. Lawson

FCA US, LLC, a foreign limited liability company,
and CLARENCE HEATH, individually,

Defendants.

Courtney E. Morgan, Jr. (P29137)
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NOTICE OF HEARING

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that Defendant Heath's Motion to Amend Scheduling Order to Allow Motion for Summary Judgment will be heard on a date and time to be set by the Court.

Respectfully submitted,

/s/ Henry B. Cooney

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Case No. 2:17-cv-12320

Honorable David M. Lawson

**AMENDED MOTION TO AMEND
SCHEDULING ORDER
TO ALLOW MOTION FOR
SUMMARY JUDGMENT
ON BEHALF OF DEFENDANT,
CLARENCE HEATH**

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AMENDED MOTION TO AMEND SCHEDULING ORDER
TO ALLOW MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF DEFENDANT, CLARENCE HEATH

NOW COMES Defendant, CLARENCE HEATH, by and through his attorneys, Plunkett Cooney, and pursuant to FRCP Rule 16(4), requests that this Court allow an amendment of the Scheduling Order to permit the filing of a Motion for Summary Judgment on behalf of Defendant Clarence Heath, based upon the following reasons:

1. That the Plaintiffs in this matter file their First Amended Complaint with this Court on September 12, 2017.
2. That it is clear from the Amended Complaint of the Plaintiffs that the focus of the Plaintiffs' claim was against Defendant FCA US, LLC alleging a products liability claim and related allegations (see Counts I – VI of First Amended Complaint).
3. That the Amended Complaint of Plaintiffs specifically identified one **“Motor Vehicle Collision on November 11, 2014.”** (First Amended Complaint, page 21).

4. That after protracted discovery and a lengthy facilitation, Plaintiffs and FCA agreed to settle Plaintiffs' claim against FCA, the amount of the settlement being confidential and not disclosed.

5. That Co-Counsel for Defendant Heath offered the policy limits of the insurance that Mr. Heath had for the accident in question essentially from the outset of this case.

6. That after counsel for Plaintiffs agreed to settle his clients' claim against Defendant FCA, in a communication dated August 23, 2019, Plaintiffs communicated for the first time to Co-Counsel for Defendant Heath, John Weston, that he was pursuing a claim for a second against Defendant Heath, the basis of this claim being completely unknown.

7. That a review of the Plaintiffs' Amended Complaint clearly indicates that the Plaintiffs alleged only one accident, namely the "Motor Vehicle Collision on November 11, 2014." (First Amended Complaint, paragraph 21).

8. That while there is no basis for the allegation of an alleged "second accident," what is abundantly clear is that Plaintiffs have never pled a claim for a second accident. Further, if Plaintiffs were to file a complaint regarding an alleged second accident, said claim would be barred by the applicable statute of limitations given that this cause of action arose on November 11, 2014.

9. That the Court's Scheduling Order provided that dispositive motions were to be filed by July 15, 2019. However, the facts and circumstances surrounding this alleged "second accident" theory of the Plaintiff did not arise until sometime in August, 2019 at the earliest.

10. That on this basis, Defendant Heath seeks leave of this Court to amend the Scheduling Order to allow Defendant Heath to file a Motion for Summary Judgment on the basis that any claim for an alleged second accident is barred by the applicable statute of limitations.

11. Pursuant to Local Rule 7.1, counsel for Defendant Heath received a letter from Plaintiffs' counsel dated October 4, 2019 advising that Plaintiffs do not concur in the relief sought in this Motion.

WHEREFORE, pursuant to FRCP Rule 16(4), Defendant Heath is requesting that this Court allow an amendment of the Scheduling Order to allow Defendant Heath to file a Motion for Summary Judgment regarding this undefined and unpled second accident claim of the Plaintiffs.

Respectfully submitted,

/s/ Henry B. Cooney

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BRIEF IN SUPPORT OF
AMENDED MOTION TO AMEND SCHEDULING ORDER
TO ALLOW MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF DEFENDANT, CLARENCE HEATH

Defendant Heath relies upon FRCP Rule 16(4), in support of his Motion to Amend the Scheduling Order to Allow Motion for Summary Judgment. The Court Rule provides, in pertinent part:

(4) Modifying a Schedule. A schedule may be modified only for good cause and with the Judge's consent. FRCP Rule 16(4).

Defendant Heath certainly has good cause to request a modification or an amendment of this Court's Scheduling Order to allow a Motion for Summary Judgment. After almost two years of protracted discovery, together with a prolonged facilitation between Plaintiffs and the Defendant FCA, a settlement of this matter was reached between Plaintiff and Defendant FCA. Counsel for Defendant Heath had previously offered Defendant Heath's policy limits of insurance at the outset of this litigation, as Defendant Heath has no other assets that would satisfy any judgment that could be taken against Defendant Heath. However, at the stage when the parties were in the process of finalizing the

settlement of this case, Plaintiffs' counsel, for the first time, advised Co-Counsel for Defendant Heath, John Weston, that he was pursuing a theory of a "second accident" against Defendant Heath. How or where Plaintiffs' counsel came up with such a theory is not known.

What is known is that the claim of a second accident or two accidents was never pled by the Plaintiff and has still not been pled to date.

It is on this basis, therefore, that Defendant Heath is requesting this Court allow an amendment of the Scheduling Order to permit Defendant Heath to file a Motion for Summary Judgment on the basis that the theory of two accidents was never pled by the Plaintiffs, and if Plaintiffs are going to plead such a theory now, it is barred by the applicable statute of limitations.

WHEREFORE, for reasons set forth above, Defendant Heath is requesting that this Court allow an amendment of the Scheduling Order to allow Defendant Heath to file a Motion for Summary judgment regarding this undefined second accident claim of the Plaintiffs.

Respectfully submitted,

/s/ Henry B. Cooney

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Proof of Service

The undersigned certifies that on 7 October 2019 a copy of the foregoing document was served upon the attorney(s) of record in this matter at their stated business address as disclosed by the records herein via:

☐ Hand delivery
☐ U.S. Mail
☐ Email

☐ Overnight mail
☐ Facsimile
☒ Electronic Filing System

I declare under the penalty of perjury that the foregoing statement is true to the best of my information, knowledge and belief.

/s/ Suzanne Mooney

Suzanne Mooney

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